

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

CLIFFORD SYKES,

Plaintiff,

V.

BLOCKBUSTER INC./VIACOM,

Defendants.

**Hon. Dennis M. Cavanaugh**

## OPINION

Civil Action No. 04-CV-6260 (DMC)

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon two independently filed motions by Blockbuster Inc., and Viacom (“Defendants”) to dismiss all counts of the Complaint filed by pro se Plaintiff Clifford Sykes (“Plaintiff”) pursuant to Rule 4(m) of the Federal Rules of Civil Procedure for Plaintiff’s failure to properly serve Defendants. No oral argument was heard pursuant to Rule 78 of the Federal Rules of Civil Procedure. For the reasons stated below both Defendants’ motion to dismiss are **granted**.

## I. BACKGROUND

Plaintiff filed a Complaint against Blockbuster Inc./Viacom on December 21, 2004, pursuant to Title VII of the Civil Rights Act of 1964 for alleged employment discrimination. (Plaintiff's Complaint ("Pl. Compl.") ¶ 1). In his Complaint, Plaintiff alleges he was wrongfully terminated because of his race. (Id. at ¶ 10). On January 4, 2005, this Court signed an Order allowing Plaintiff to proceed without prepayment of fees and directing Plaintiff to serve the

summons and complaint on Defendants pursuant to Rule 4 of the Federal Rules of Civil Procedure. (See Order dated January 4, 2005).

On May 16, 2005, Plaintiff purported to serve Defendant Blockbuster Inc. with process. Defendant Blockbuster then filed a motion to dismiss on June 17, 2005, for Plaintiff's failure to properly serve it with the Summons and Complaint in compliance with Rule 4 of the Federal Rules of Civil Procedure. (Defendant Blockbuster's Brief in Support of its Motion to Dismiss ("Def. B. Br.") at 2). Defendant Viacom filed a motion to dismiss on September 29, 2005, for Plaintiff's failure to properly serve it with process. Plaintiff filed a letter with the Court on July 26, 2005, but never filed a response to either Defendant's motion to dismiss. Due to the fact that Plaintiff failed to file a response to either motion to dismiss, both motions will be considered unopposed. Although these motions were filed separately, the Court will address the motions together in this Opinion.

## **II. DISCUSSION**

### **A. Rule 4(m) of the Federal Rules of Civil Procedure**

A defendant may file a motion to dismiss pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure when a plaintiff fails to properly serve him or her with the summons and complaint. Both Defendants have filed motions to dismiss pursuant to Rule 4(m) of the Federal Rules of Civil Procedure for Plaintiff's failure to properly serve Defendants with process as required by Rule 4(m). Rule 4(m) states: "[i]f service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action." A pro se plaintiff's ignorance of the requirements of rule 4(m) do not constitute good cause for failure to comply

with the Federal Rules of Civil Procedure. Carlton v. Bullet, 1989 WL 125365 \*2 (D.N.J. 1990).

### **B. Plaintiff's Failure to Perform Proper Service**

Plaintiff filed his Complaint on December 21, 2004. (See Pl. Compl.). Pursuant to Rule 4(m), Plaintiff had to serve Defendants with a Summons and a copy of the Complaint within 120 days of December 21, 2004, which would have been April 20, 2005. This Court specifically directed Plaintiff to serve Defendants pursuant to Rule 4 of the Federal Rules of Civil Procedure in an Order dated January 4, 2005. Despite my directions and the requirements set forth in Rule 4(m), Plaintiff did not serve Defendant Blockbuster with a copy of the Summons and Complaint until May 16, 2005. (Def. B. Br. at 3). Plaintiff did not serve Defendant Viacom with a copy of the Summons and Complaint until August 25, 2005, more than four months after the Rule 4(m) deadline. (Def. V. Br. at 4). Plaintiff also failed to file a response to either of Defendants' motions to dismiss. While this Court acknowledges that pro se plaintiffs deserve the benefit of the doubt, disregarding Court rules will not be tolerated. Plaintiff failed to comply with the requirements of Rule 4(m). Therefore, Defendants' motions to dismiss are granted.

### **III. CONCLUSION**

For the reasons stated, it is the finding of this Court that Defendants' motions to dismiss Plaintiff's Complaint are **granted**. An appropriate Order accompanies this Opinion.

S/ Dennis M. Cavanaugh  
Dennis M. Cavanaugh, U.S.D.J.

Date: February 2, 2005  
Original: Clerk's Office  
Cc: All Counsel of Record  
The Honorable Mark Falk, U.S.M.J.  
File